

87-688

Supreme Court, U.S.
FILED

OCT 14 1987

JOSEPH F. SPANIOLO, JR.,
CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1987

HARRY N. ZEMSKY,

Petitioner,

—v.—

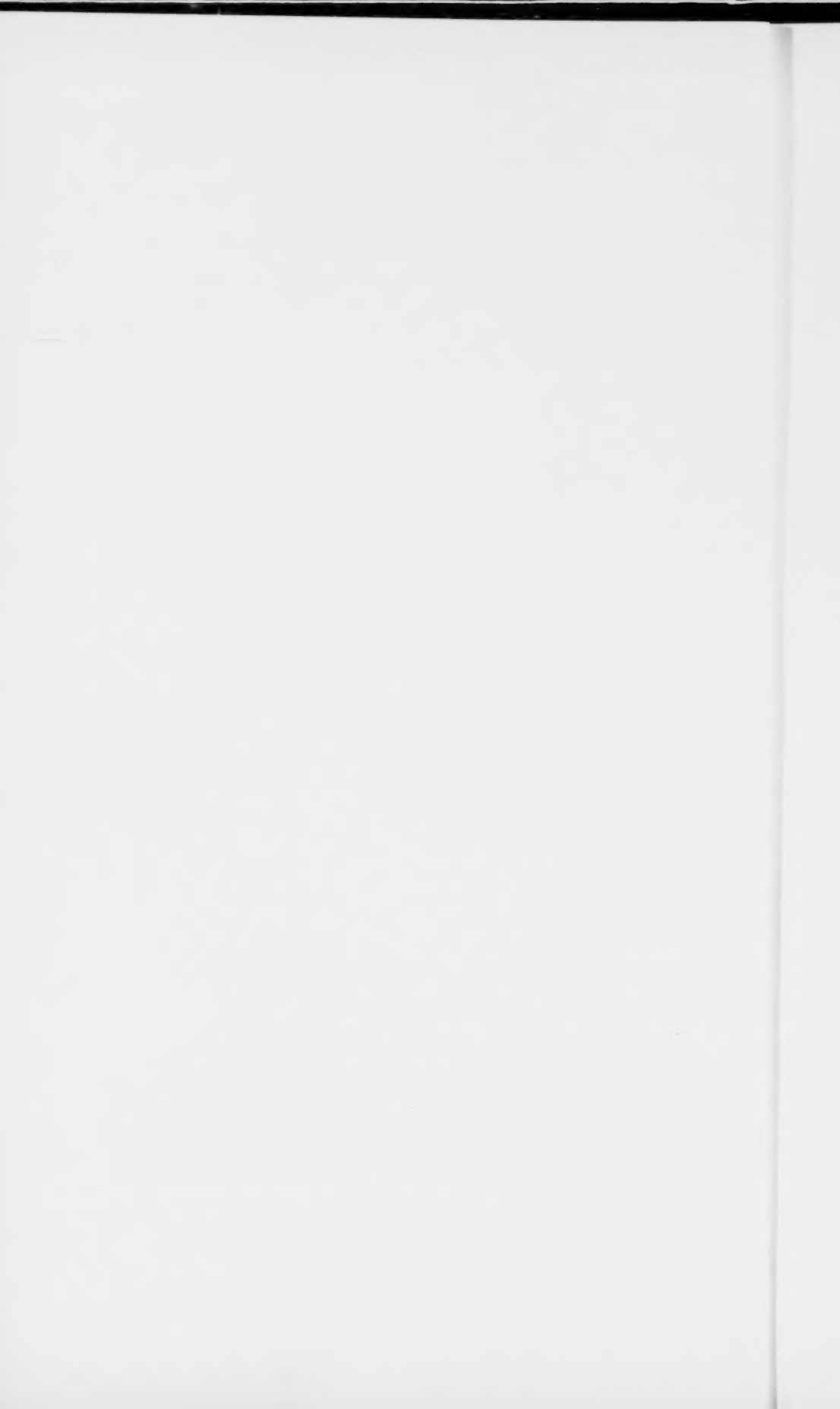
THE CITY OF NEW YORK; THE BOARD OF EDUCATION
OF THE CITY OF NEW YORK; VICTOR VILAREAL; ALAN
IRGANG; JOHN SISTI; ROBERT J. LEVENTHAL; PETER
ROSENBERG; XAVIER FRANCIS RUGGIERO; LOFTUS NOV-
ELTY AND MAGIC COMPANY, A CORPORATION; DOE
ONE; DOE TWO; ETC.,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Harry N. Zemsky, Pro Se
3030 Emmons Avenue
Brooklyn, New York 11235
Telephone: (718) 934-7358

October 14, 1987



QUESTIONS PRESENTED FOR REVIEW

- 1) Is plaintiff entitled to seek relief against Municipal Defendants under the Constitution and Laws of the United States, beyond his liberty interest in freedom from bodily injury?
- 2) Is plaintiff entitled to seek relief under the Constitution and Laws of the United States against the private party defendants in this action?
- 3) Are any of plaintiff's claims time-barred?
- 4) Do injuries and losses suffered by plaintiff consequent to his seeking relief in accordance with the requirements of New York State General

Municipal Law, Article 4: Sections 50-e.1.(a) and 50-i render them violative of provisions of the United States Constitution as amended?

5) What standard of legal expertise may properly be required from a lay plaintiff forced to represent himself?

6) Should plaintiff be granted permission to amend his complaints?

ALL PARTIES ARE NAMED IN THE CAPTION
FOR THIS CASE

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW ..	i-ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
THE COURTS BELOW	1 - 2
GROUND ON WHICH JURISDICTION OF COURT IS INVOKED	2 - 3
CONSTITUTIONAL PROVISIONS AND LAWS INVOLVED IN THIS CASE ..	4 - 16
STATEMENT OF THE CASE	16 - 23

TABLE OF AUTHORITIES

United States Constitutional Provisions:

Article I - Section 10.(1) .	16-21
Article III - Section 1	21

United States Constitutional Amendments:

Article I	passim
Article IV	passim
Article V	passim
Article VII	passim
Article VIII	passim
Article IX	passim
Article XIV	passim

United States Statutory Provisions:

28 U.S.C. § 1254(3)	2-3
28 U.S.C. § 2101(c)	2-3
28 U.S.C. § 1332(a)(1)	21
28 U.S.C. § 1343 1,2,3,4	passim
28 U.S.C. § 2403(b)	21-22
42 U.S.C. § 1981	passim
42 U.S.C. § 1982	passim
42 U.S.C. § 1983	passim
42 U.S.C. § 1985(2)(3)	passim
42 U.S.C. § 1986	passim
15 U.S.C. § 2051(a)(b) et seq.	21

Code of Federal Regulations: Title 16,	
Part 1000 et seq.	21

New York State General Municipal	
Law, Article 4: Sections 50-e.1.(a)	
and Section 50-i (McKinney's	
Consolidated Laws of New York,	
Annotated, Book 23.)	21-22

THE COURTS BELOW

District Court granted Municipal Defendants motions to dismiss plaintiff's claims under 42 U.S.C. §§ 1981, 1982, 1983, 1985 and 1986, except for violation of plaintiff's liberty interest in freedom from bodily injury under § 1983; and on its' own motion dismissed plaintiff's claims against the private party defendants; and further stayed all federal proceedings pending "disposition" of plaintiff's state court action.

Second Circuit Court of Appeals affirmed the dismissal of my claims under 42 U.S.C. §§ 1981, 1982, 1983, 1985 and 1986; affirmed dismissal of my claims against the private party defendants; but reversed the District

Court's order that stayed my remaining 1983 claims against the Municipal Defendants, and remanded the case for further proceedings.

GROUND'S ON WHICH JURISDICTION
OF COURT IS INVOKED

Review is sought of a decision in this case dated June 12, 1987 (the mandate I believe issued on July 3, 1987) of the United States Court of Appeals for the Second Circuit.

On September 8, 1987, Mr. Justice Marshall of the United States Supreme Court signed an order (No. A-192) extending the time for filing a petition for a writ of certiorari in

this case to and including October 9, 1987. (App. 35-36).

On October 7, 1987, I applied for an additional extension of time to file my petition for a writ of certiorari, to and including October 14, 1987. (App. 384-386).

I called the clerk's office (at 5:15 PM, October 13, 1987) and learned that the extension applied for had been granted.

The jurisdiction of the United States Supreme Court in this matter is invoked pursuant to 28 United States Code, Sections 1254(3), and 2101(c).

CONSTITUTIONAL PROVISIONS AND
LAWS INVOLVED IN THIS CASE

The Constitutional provisions and laws of the United States involved in this case include:

CONSTITUTION OF THE UNITED STATES

ARTICLE I

SECTION 10. (1) No State shall . . .
impair(ing) the obligation of contracts.

ARTICLE III

SECTION 1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States . . .; . . . to controversies between citizens of different States.

AMENDMENTS

ARTICLE I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,

ARTICLE V

No person shall . . . be deprived of life, liberty, or property, without due process of law;

ARTICLE VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, . . .

ARTICLE VIII

. . . nor cruel and unusual punishments inflicted.

ARTICLE IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE XIV

SECTION 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. SECTION 1332. Diversity of citizenship; amount in controversy; cost

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and is between . . .

(1) citizens of different States;

28 U.S.C. SECTION 1343. Civil rights
and elective franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1986 of Title 42 which he had

knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

42 U.S.C. SECTION 1981. Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. SECTION 1982. Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit,

purchase, lease, sell, hold, and convey real and personal property.

42 U.S.C. SECTION 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. SECTION 1985. Conspiracy to interfere with civil rights

(2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified . . . ; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to

deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or

Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. SECTION 1986. Action for neglect to prevent conspiracy

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section [42 USC § 1985], are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representative, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action . . . But no action under the provisions of this section shall be sustained which

is not commenced within one year after the cause of action has accrued.

1) STATEMENT OF THE CASE

Paragraph 7 of my complaint (app. 281) notes "are the results of continuing policies and practices... (app. 282)...to deprive victims...of compensation for injuries and losses...especially when...victim is not represented by an attorney"; is based upon the "NO ATTORNEY" letter (app. 206-207); and notice of claim letter to defendant Irgang (app. 208-209); and forms the basis for the third cause of action in my complaint (app. 291-294).

The above is the heart of this case. Why was the fact that mine was a

"NO ATTORNEY" claim so "IMPORTANT" to the comptroller's office? Was it a recognition of the difficulties I faced in pursuing my claim, and a benevolent suggestion to the Board of Education that it assist me in this matter? Subsequent events demonstrate otherwise.

It was the administrative establishment of an impermissible class composed of victims of official misconduct and mismanagement, forced to seek justice without an attorney, and therefore especially vulnerable to invidious discrimination and denial of due process and equal protection under color of state law; and it was an invitation to the other Municipal Defendants to join a conspiracy to:

- (1) force me to discontinue my efforts to obtain justice;

(2) suppress the true facts of my injuries; and

(3) prepare false evidence that would likely deprive me of compensation for my injuries.

The above led directly to the "conference" (Fourth Cause of Action) (app. 294-297) where defendant Irgang's comments included "...if you claim you're having trouble with your eyes... I don't think someone who can't see should be teaching....think twice if you don't have it so serious....you're going to lose either way...a kid threw something in your face so your eyes are bad.... I don't think a teacher should be teaching with those kinds of physical problems.... So be careful what you say about your physical problems.... You're going to wind up

before the medical board.... I think you understand me very well."

It further places in proper perspective defendant Irgang's false and defamatory letter (App. 200-201); which formed the basis for my Twenty-Second Cause of Action (App. 351-353)

It also explains the preparation of the document "Accident Reports for Mr. Zemsky" (App. 202-205) which formed the basis for my Twentieth Cause of Action (App. 350-351)

The acts of defamation complained of were obviously committed in order to prejudice my chances of recovery in the state court by causing the court to question my veracity and likely cause the court to view my allegations in an unfavorable light.

My allegations of conspiracy are neither vague nor conclusory but are supported by descriptions of numerous overt acts throughout the complaint; e.g. paragraphs 2, 7, 10, 12, 15, 17, 21, 24, 27, 31, 34, 36, 37, 39, 41, 45-47, 49-55, 57-59, 61, 68-71, and 73-78. And their purpose is evident throughout the complaint.

2) Dismissal of the complaint against former student Vilareal is improper. Vilareal assaulted and injured me and willingly joined and participated in the conspiracy by the Municipal Defendants when on May 2, 1983 he stated that his assault upon me was an accident; and on October 3, 1984, (fifteen months after his graduation) he prepared a second false and defamatory statement (App. 199) which

formed the basis for defendant Rosenberg's false and defamatory statement about Vilareal's January 10, 1983 assault upon me (App. 197-198).

Dismissal of the complaint against Loftus Novelty and Magic Company was improper because it is explicitly authorized as a diversity of citizenship controversy, and is a matter of public policy as expressed in the federal consumer product safety laws.

4) The injuries and losses wrongfully inflicted upon me were so clearly a consequence of the submission of a claim within ninety days of injury, as required by New York State General Municipal Law, Article 4 § 50-e.1.(a); and my institution of an action within one year and ninety days, as required by § 50-i of this law, that their

constitutionality under the due process and equal protection provisions of the 14th Amendment is, I believe, in question.

5) As a lay, pro se plaintiff, I prepared my complaints after reading the relevant constitutional and statutory provisions. Is dismissal warranted because I was legally ignorant and inarticulate?

6) On June 30, 1986, I filed a letter in District Court requesting permission to amend my complaints (App. 121). I have received no response, nor was it entered on the docket sheet, nor placed in the case file.

This is of the utmost importance here because:

- 1) Amendment could correct some of the deficiencies noted by the courts below, and
- 2) it would enable me to add causes of action which have accrued but have not been included in my complaint, and furthermore,
- 3) I have been afraid to file new complaints for newly accrued causes of action, because the Municipal Defendants have failed to make a motion regarding new causes of action or complaints, as they had requested and received permission to do. (App. 195-196; 216-218)

Harry Zemsky, Pro Se
3030 Emmons Avenue
Brooklyn, New York 11235
(718) 934-7358

